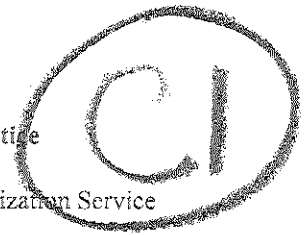




U.S. Department of Justice

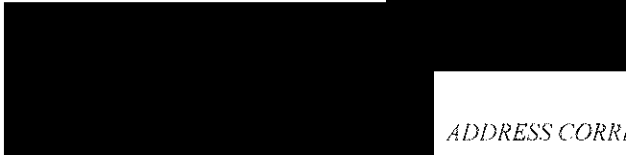
Immigration and Naturalization Service



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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
U.L.B. 3rd Floor
Washington, D.C. 20536



ADDRESS CORRECTION REQUESTED

File: WAC 00 243 53342

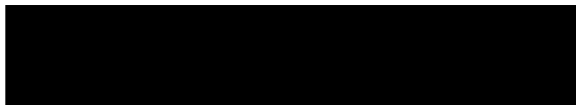
Office: CALIFORNIA SERVICE CENTER

Date:

JAN 15 2003

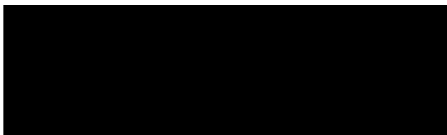
IN RE: Petitioner:

Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 CFR 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 CFR 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a nonprofit religious corporation. It seeks classification of the beneficiary as a special immigrant minister pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a minister at an annual salary of \$21,000.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on the vocation of a minister for at least the two years preceding filing of the petition.

On appeal, counsel for the petitioner asserts that the beneficiary has been serving the petitioner on a voluntary basis.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioning church is a member of the East Seoul Assembly of Presbyterian Church of Korea denomination. The beneficiary is a native and citizen of the Republic of Korea who was last admitted

The petitioner furnished a "certificate of ordination" and enrollment verification from the Fuller Theological Seminary in Pasadena, California.¹

The evidence of record is insufficient to establish that the beneficiary is a qualified minister of the Korean Presbyterian Church.

First, the petitioner has not explained the requirements for ordination in the denomination or shown that the beneficiary has satisfied such requirements.

Second, to establish that an alien is qualified in a religious position and has been carrying on such a position, acceptable evidence includes a letter from a Superior or Principal of the denomination in the United States. Matter of Varughese, 17 I&N Dec. 399 (BIA 1980). The petitioner church states that it is a member of the East Seoul Assembly of Presbyterian Church of Korea denomination. The petitioner provided the Service with a letter from an official of the Miju-America Presbytery of the General Assembly of Presbyterian Church of Korea stating that the beneficiary is an ordained pastor affiliated with it. The petitioner failed to explain the relationship between its own denomination (East Seoul Assembly) and the Miju-America Presbytery denomination, so this evidence is insufficient to establish that the beneficiary is an ordained minister in the petitioner's denomination.

Third, simply producing documents purported to be certificates of ordination, which are not based on theological training or education, is not proof that an alien is entitled to perform the duties of a minister. Matter of Rhee, 16 I&N Dec. 607 (BIA 1978). For this reason as well, the petition may not be approved.

A petitioner also must establish that the alien beneficiary was continuously carrying on the vocation of a minister for at least the two years preceding the filing of the petition.

8 CFR 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

In the case of special immigrant ministers, the alien must have been engaged solely as a minister of the religious denomination for the two-year period in order to qualify for the benefit sought

¹ The verification states that the form is not valid without the Seminary seal and an embossed seal of the Registrar's Office. The form provided to the Service lacks both seals.

and must intend to be engaged solely in the work of a minister of religion in the United States. Matter of Faith Assembly Church, 19 I&N 391 (Comm. 1986).

The petition was filed on August 22, 2000. Therefore, the petitioner must establish that the beneficiary had been continuously and solely carrying on the vocation of a minister of religion since at least August 22, 1998.

In this case, an official of the petitioning church stated that the beneficiary served as the director of Christian education at the Korean Youngnak Presbyterian Church in San Diego from December 20, 1997 through February 14, 1999 on a voluntary basis while he was pursuing his studies at the Linda Vista Bible College. The petitioner stated that the beneficiary joined the petitioner church on February 15, 1999 and from then on, served as a volunteer while continuing his studies.

The petitioner made no claim and submitted no evidence that the beneficiary had been engaged "solely" as a minister of religion during the two-year period or that he would be solely engaged as a minister upon approval of the visa petition. On the contrary, the petitioner provided the Service with evidence that the beneficiary was a full-time student in the two-year period preceding filing the petition.

The evidence on the record shows that the beneficiary was not ordained as a minister until April 1999, 16 months prior to filing the petition. The evidence shows that the beneficiary was not employed as an ordained minister for the two-year period prior to filing the petition.

Finally, the evidence shows that the beneficiary was a volunteer, rather than a paid employee of the petitioner. The Service does not recognize the voluntary participation in a church's activities as satisfying the requirement of having been continuously carrying on a religious vocation or occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.